



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, MNDC, LAT, RR, FF

### Introduction

This matter dealt with an application by the Tenant to cancel three Notices to End Tenancy for Cause dated October 12, 2009, for compensation for damage or loss under the Act or tenancy agreement, for an order allowing the Tenant to deduct the cost of services or facilities not provided and to recover the filing fee for this proceeding. At the beginning of the hearing, the Tenant abandoned his application for an order permitting him to change the locks.

At the beginning of the hearing the Parties also agreed to end the tenancy on January 31, 2010. The Parties acknowledged that this agreement would form part of this Decision pursuant to s. 63(2) of the Act and be enforceable under s. 55(2)(d) of the Act.

### Issues(s) to be Decided

1. Is the Tenant entitled to compensation for a loss of heat?

### Background and Evidence

This tenancy started on October 3, 2002. Rent is \$726.00 per month and includes heat and hot water.

On September 28, 2009, the Tenant left a note on the Property Manager's door that he did not have heat but he forgot to leave his name and suite number. Consequently, the Property Manager added a comment to the note asking who had written the note and left it on his door. The Tenant found the note on October 1, 2009 and left his name and suite number. Shortly thereafter, the Tenant said he buzzed the Property Manager's intercom to see if he could check his thermostat but the Property Manager was abrupt with him, made rude comments and said that he was having dinner.

The Tenant said that when he went back to his rental unit, the Property Manager tried to reach him on his intercom but he did not answer because he did not want to deal with the Property Manager while he was still angry. The Tenant claimed that shortly thereafter while he was taking a shower, he could hear the Property Manager banging on his door so he shouted that he was taking a shower and that the Property Manager should come back later. The Tenant said he believed the Property Manager then tried

to gain entry because he heard 2 of the locks on the door open and his shoe holder fall to the floor. The Tenant said that he was upset and yelled at the Property Manager to get out.

The Tenant later went by the Property Manager's shop and the two of them spoke. The Tenant said the Property Manager advised him that he would come by the rental unit on October 5, 2009 to fix the heat but the Property Manager never showed up. The Tenant said he called the Property Manager on the evening of October 5, 2009 and the Property Manager told him that he meant the following Monday. The Tenant said he waited at his rental unit on October 12, 2009 for the Property Manager to come by but no one knocked on the door. Instead, a letter from the Property Manager dated October 13, 2009 was slipped under his door on October 12, 2009 alleging that the Tenant was denying access. The heat was fixed on October 16, 2009.

The Property Manager said that he offered to come back to the Tenant's unit on October 1, 2009 to override the system but the Tenant was going to the bank and didn't want anyone in his unit while he wasn't there. The Property Manager also claimed that the Tenant agreed that the repair could wait until October 13, 2009. The Property Manager said that on October 6, 2009 while he was on holidays, he received a call from the Tenant inquiring as to why he had not fixed the heat. The Property Manager said he reminded the Tenant that they agreed he would do so on October 13, 2009 and told the Tenant he could contact someone else to temporarily override the system but the Tenant got angry and hung up. The Tenant admitted that he did not agree to a temporary override of his thermostat because it would have resulted in the heat being on at all times with no way to regulate it.

On October 12, 2009, the Property Manager said he discovered that the Tenant had filed a complaint with the RCMP detachment regarding the alleged unauthorized entry by the Property Manager on October 1, 2009. The Property Manager said he put a letter under the Tenant's door on October 13, 2009 claiming that he was not co-operating. The Property Manager claimed that the Tenant then put a note under his door suggesting that the Property Manager make arrangements. Consequently, the Property Manager said he left a Notice for the Tenant proposing 2 dates to do the heat repair. The Property Manager argued that the repair could easily have been done on October 1, 2009.

## Analysis

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation or is a material term of the tenancy agreement. If a service or facility is terminated or

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restricted, a landlord must reduce the rent by an amount that is equivalent to a reduction in the value of the tenancy as a result of the loss of the service or facility.

I find on a balance of probabilities that there was a misunderstanding between the parties as to when the repair of the Tenant's heat would be made. The Tenant thought it would be made on October 5, 2009 and the Property Manager thought it would be made on October 13, 2009. Notwithstanding this misunderstanding, I find that the Landlords were put on notice by the Tenant on October 6, 2009 that he wanted his heat fixed properly and did not want a temporary override. I find that there is no evidence that the Landlords made any attempt to repair the Tenant's heat between October 6 and October 13, 2009 (other than a temporary override of the thermostat).

I do not find it unreasonable that the Tenant did not want the thermostat to be overridden but rather fixed properly. Consequently, I find that the Tenant is entitled to compensation for the loss of a facility that is included in his rent for the period October 6 to 13, 2009 (when the Landlords next approached him to do the repair) for a total of \$50.00. I also find that the Tenant is entitled to recover his \$50.00 filing fee for this proceeding for a total monetary award of **\$100.00**. I order pursuant to s. 72 of the Act that the Tenant may deduct this amount from his next rent payment when it is due and payable.

## Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed and the Parties agree that the tenancy will end on January 31, 2010. The Tenant's application for compensation for loss of a service or facility is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 24, 2009.

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Dispute Resolution Officer